A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.705/2001

CORAM: Hon'ble Shri **S.R.Nayak**, Chief Justice &
Hon'ble Shri **D.R.Deshmukh**, J.

Petitioner : State of Chhattisgarh, Through Principal Secretary, Commercial Tax Department, Mantralaya, D.K.Bhavan, RAIPUR.

Versus

Respondents : 1. Jayant Kumar Daftary, S/o Shri Jagdish Daftary, aged 51 years, Ex-Asstt. Sales Tax Officer (Commercial Tax Officer), HIG-C/56, Shailendra Nagar, RAIPUR

: 2. Madhya Pradesh State Administrative Tribunal Through Registrar.

Shri Utkarsh Verma, Dy. Govt. Advocate for the petitioner/State.
Shri Ashish Shrivastava, Counsel for respondent No.1

ORAL ORDER
(Passed on 14.2.2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

The first respondent while working as Assistant Sales Tax Officer (later on designated as Commercial Tax Officer under Madhya Pradesh Commercial Tax Act, 1994) sought voluntary retirement on completion of 20 years of qualifying service as provided under Rule 42 of M.P.Civil Service (Pension) Rules, 1976 (for short 'the Rules') with effect from 1.4.1995. After his retirement, his pensionery claims were not settled by the Department. The Department withheld the pensionery benefits payable to the first respondent on the ground that departmental enquiry initiated against him while he was in service was still pending; that a crime was registered against him under the provisions of Prevention of Corruption Act and his retirement under the Voluntary Retirement Scheme was also irregular.

2. Being aggrieved by the action of the Department, the first respondent instituted O.A.No.84/2000 before the M.P.State Administrative Tribunal at Raipur (for short 'the Tribunal'). The Tribunal having opined that there was no justification to withhold the pensionery benefits of the first respondent, by its order dated 19.1.2001, allowed the O.A. filed by the first respondent and held that the first respondent is entitled for interest on the amounts of all retrial benefits given to him except the amount of G.P.F. on 6% per annum after two months of his retirement till the date of payment. At this stage itself, it needs to be noticed that by the time the Tribunal passed the impugned order, the proceedings initiated against the first respondent came to an end and on such conclusion of the proceedings, it appears that the Department paid retiremental benefits to the first respondent. In the circumstance, the only contention urged before the Tribunal was that the first respondent is entitled to interest on delayed payment of retrial benefits. That is how the above order was passed by the Tribunal.

3. The State of Chhattisgarh, however, being aggrieved by above order of the Tribunal dated 19.1.2001 has preferred this Writ Petition.

4. We have heard learned counsel for the parties. Learned Government Advocate would contend that as on the date the first respondent was permitted to retire under Voluntary Retirement Scheme w.e.f. 1.4.95, the departmental proceedings and other proceedings referred to above were pending against him and therefore, the Department was well justified in withholding the payment of pensionery benefits as provided under Rule 9 of the Rules and in that view of the matter, there is no justification for the Tribunal to award interest even with regard to that period during which the Department was entitled to withhold the pension. In other words, the argument of learned Government Advocate is that if by

virtue of the provisions of Rule 9 of the Rules, the Department could withhold pensionery benefits payable to the first respondent for a specified period, the Tribunal or the Court cannot direct the Department to pay interest even for that period during which the Department legitimately and in terms of law withheld the payment. On the other hand, learned counsel appearing for the first respondent would support the impugned order passed by the Tribunal.

5. Having heard learned counsel for the parties, we find considerable force in the submission of the learned Government Advocate. There is no controversy between the parties that when the first respondent was permitted to retire under Voluntary Retirement Scheme w.e.f. 1.4.95, the departmental proceedings and other proceedings referred to above were pending.

6. Sub-rules (1) & (2) of Rule 9 of the Rules read as follows:

> **"9. Right of governor to withhold or withdraw pension.** -(1) The Governor reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from pension of the whole or part of any pecuniary loss caused to the Government if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:
>
> Provided that the State Public Service Commission shall be consulted before any final orders are passed:
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time];
>
> (2)(a) The departmental proceedings [xxx], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued an concluded by

the authority by which they were commenced, in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, that authority shall submit a report regarding its findings to the Governor.

(b) The departmental proceedings, if not instituted while the Government servant was in service whether before his retirement or during his re-employment:--

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

[(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings:-

(a) in which an order of dismissal from service could be made in relation to the Government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the Government servant during his service if it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government]".

Sub-rules (1) & (2), if read together, would make it very clear that the Department was justified in withholding the pensionery benefits to the first respondent during the pendency of the departmental proceedings, of course, subject to the rider incorporated in sub-rule (4). It was brought to our notice that departmental proceedings initiated against the first respondent ultimately culminated in the imposition of penalty of deduction of 10% pension for 10 years on the first respondent as a disciplinary measure. Looking from that angle also, the first respondent cannot claim interest as a matter of right for the entire period.

7. In the result and for the foregoing reasons, in modification of the impugned order passed by the Tribunal, we direct that the first respondent is not entitled to interest at 6% per annum for the period during which the Department in terms of sub-rule (1) read with sub-rule (2) of Rule 9 of the Rules could have validly withheld pension, however, subject to the provision contained in sub-rule (4) of Rule 9. The writ petition is allowed to the above extent.

8. Before parting with this case, in order to alleviate the apprehension expressed by the learned counsel for the first respondent, we would say that the observations made by us in this order should not in any way influence the decision-making in the writ petition said to have been preferred by the first respondent against the penalty order, which is said to be pending in this Court for adjudication.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani